IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 221(S/S) 2000

Pramod Kumar,
S/o Shri Jaggu Singh,
R/o G.I.C. Quarter, Ramnagar,
Nainital and another. ---------- Petitioner

Versus

State of Uttaranchal,
Through Secretary,
Department of Education,
Govt. of Uttaranchal, Dehradun and others. ---------- Respondents

Mr. Manoj Tiwari, learned Counsel for the Petitioners.
Mr. K.P. Upadhyaya, learned Standing Counsel for the State.

Coram: Hon. S.H. Kapadia, C.J.
Hon. Rajesh Tandon, J.

Dated: 29.09.2003

PC:

Rule.

Respondents waive service.

By consent, Writ petition was taken for final hearing and disposed of.

1. By this Petition, the petitioners seek to challenge the criteria for awarding Quality Points Marks in the matter of appointment to the post of Assistant Teacher, L.T. Grade under Appendix D to U.P. Subordinate Education (Trained Graduate Grade) Service Rules, 1983. These Rules were framed in 1983 under Article 309 of the Constitution. Under the original Rules, candidates were required to be selected by a Commission on the basis of written examination. In 1992, the procedure was changed and selection was required to be made by the Joint director. In 1992 Appendix D was inserted. Under Appendix D, there was a formula for giving Quality Point Marks. Under that formula, weightage was given for the marks obtained by a

candidate in the 10th, 12th and also in Graduation. Marks also given to the candidates, who appeared for training both in practical and theory. The written examination was dispensed with. Being aggrieved by introduction of the above formula, this Writ Petition has been filed.

2. Under Rule 8 of U.P. Subordinate Education Service Rules, 1983, academic qualification has been prescribed. A candidate for direct recruitment to the post of Assistant Master (Arts) was required to possess the qualifications mentioned in Item 5 of Rule 8. Item 5 of Rule 8 reads as follows:

(a) "Intermediate examination of the Board of High School and Intermediate Education Uttar Pradesh and any equivalent examination with Art, Master's Training Certificate (formerly known as Drawing teacher certificate) of Government School of Arts and Crafts, Lucknow or a certificate recognised as equivalent thereto.

(b) Bachelor of Arts Degree from a recognised University or a degree recognised as equivalent thereto with a certificate awarded by the Government Drawing and Handicrafts Centre, Allahabad (since abolished) or a certificate recognised as equivalent thereto."

Petitioners are holders of Art Master's Training Certificate, formerly known as Drawing teacher's certificate. Under the above prescribed qualifications, a candidate should be a holder of Art Master's Training Certificate or a holder of Bachelor of Arts degree from a recognised University. These are the qualifications prescribed under the Rules. Now coming to Appendix D, the same has been introduced in 1992 under which Quality Points for selection by direct recruitment are prescribed. There are no Quality Points prescribed for candidates holding Art Master's Training Certificated. Therefore, in this Petition, it is argued that Appendix D goes beyond Rule 8 of U.P. Subordinate Education Service Rules, 1983.

3. Mr. Manoj Tiwari, learned Counsel for the petitioners contended that the system of giving Quality Points for selection on the basis of marks obtained by the candidate in 10th standard, 12th standard and in graduation

was arbitrary and bad in law. He contended that Appendix D was substituted in 1992. He contended that the system of giving Quality Points is not contemplated by Rule 8. He contended that Appendix D was introduced in 1992 without amending Rule 8. He contended that Quality Points cannot take place of a written examination, which was held by the Commission right from 1983 up to 1992 and, therefore, Appendix D should be struck down. He, further, contended that no Quality Points are given under Appendix D to the candidates holding Art Master's Training Certificate. He, therefore, contended that Appendix D should be struck down.

4. Mr. K.P. Upadhyaya, learned Standing Counsel for the respondents submitted that Appendix D was introduced under Rule 15 of U.P. Subordinate Education Service Rules, 1983. He submitted that after 1992, for post of Assistant Master (Arts), it is necessary for a candidate to possess Bachelor of Arts Degree from a recognised University. He pointed out that this Degree is not to be read in a wider sense. He pointed out that after 1992, the Government is insisting on a Degree in Drawing because the recruitment is to the post of Assistant Master (Arts) and, therefore, it was necessary for the candidate to possess such a degree. However, Mr. Upadhyaya conceded that under the Rules, 1983, a candidate, who holds Art Mater's Training Certificate of a Government School of Arts and Crafts, Lucknow, is also eligible to be considered for direct recruitment to the post of Assistant Master (Arts).

5. We are not inclined to interfere under Article 226 of the Constitution in this case. The advertisement was issued on 16th November 1998 under Rule 8 read with Appendix D. Petitioners participated in the selection process. They were not selection. Thereafter, they have filed this Writ Petition challenging the Quality Point System introduced by Appendix D as far back as 1992. In the Petition, the selected candidates are not made party respondents. Petitioners are challenging Appendix D and if that Appendix D has to be set aside, it would affect the rights of the candidates, who have been selected pursuant to the advertisement dated 16th November 1998.

Therefore, we are not inclined to interfere under Article 226 of the Constitution.

6. However, the State of Uttaranchal has come into existence on 9th November 2000. There is a serious lacuna in Appendix D. Although, Arts Master's Training is recognised under Rule 8 as a qualification for recruitment, no Quality Points are given for that qualification under Appendix D. This lacuna should be removed by the State at the earliest either by framing new Rules or by giving Quality Points for Arts Master's Training Certificate. This recommendation is made so that in future, the candidates appearing for direct recruitment to the post of Assistant Master (Arts) do not face prejudice vis-à-vis candidates having Degree in Bachelor of Arts.

Subject to above, the Writ Petition is rejected. Interim order stands vacated. No order as to costs.

(Rajesh Tandon, J.) **(S.H. Kapadia, C.J.)**

Gurpreet